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Ms. Linda Moore-Cannon, Director
Arizona Department of Economic Security
1717 West Jefferson
Phoenix, Arizona   85007

RE: I91-025   (R90-088)

Dear Ms. Moore-Cannon:

You have asked whether, when administering Aid to Families with
Dependent Children (AFDC), the Department of Economic Security may
consider a man the natural parent of a child born out of wedlock when
paternity has not been established in a court of law. We conclude
that for this purpose, the man may be considered the natural parent
even when there has not been an adjudication of paternity, so long as
there is sufficient evidence of paternity as determined by the
Department.

Title IV-A of the Social Security Act provides for public
assistance for the care of dependent children. 42 U.S.C. §601 et
seq. A dependent child is defined as a child "deprived of parental
support or care." 42 U.S.C. §606(a). As in other federally funded
programs, a state is required to submit a "State Plan" to the federal
agency responsible for administering that program. The State Plan is
essentially a contract between the federal government and the state.
Federal regulations set forth State Plan requirements. These
regulations provide that in making the determination that a child is
eligible for AFDC by reason of deprivation of parental support or
care, the word parent is defined as the child's natural or adoptive

parent.1/ Federal regulations do not define the term "natural parent."

The responsible federal agency, the U.S. Department of Health and Human Services (HHS), has interpreted this regulation with respect to who is a natural parent for the purpose of determining eligibility for AFDC. The agency has stated that the determination of whether a man should be considered the natural parent "is contingent upon the State law used for establishing paternity." Action Transmittal, SSA-AT-81-10, May 5, 1981. Thus, under the HHS interpretation, "the State agency may make paternity determinations, so long as the criteria for making the determinations are consistent with the State law for establishing paternity." Action Transmittal SSA-AT-81-10 is attached.

Under Arizona law, the Department of Economic Security (DES), is the "single state agency for the purposes of administering and in furtherance of each federally supported state plan." A.R.S. § 41-1954(A)(8). Therefore, DES is responsible for determining a child's eligibility for AFDC.

By way of guidance from Arizona Courts, a parent is "one who begets offspring." Sailes v. Jones, 17 Ariz. App. 593, 597, 499 P.2d 721 (1972) The concept of illegitimacy has been abandoned in Arizona. Moreno v. Superior Court, 3 Ariz. App. 361, 363, 414 P.2d 749 (1966). Thus, under Arizona law, the word "parent" is not limited to persons

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1/ 45 CFR § 233.90(a)(1):

(a) State plan requirements. A State plan under title IV-A of the Social Security Act shall provide that:
    (1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children.

having children born in lawful wedlock. _Imperial v. State_, 65 Ariz. 150, 152, 176 P.2d 688 (1947). Nor do the federal regulations impose such a requirement.

Under Arizona law, a court may be called upon to determine paternity in several situations. Paternity may be determined in a paternity proceeding (A.R.S. § 12-841 _et seq._) or in a dissolution action (A.R.S. § 25-320 _et seq._).[2] Another occasion when paternity might be determined is when a court is requested to order the father to pay child support. The issue might also be adjudicated in a probate proceeding (A.R.S. § 14-2101 _et seq._) to determine the right of the child to inherit from the father or the right of the father to inherit from the child. Paternity may also be decided in a criminal proceeding for failure of a parent to support a child. A.R.S. § 12-2458.

Evidence of paternity relied upon by Arizona courts when called upon to determine the issue of paternity includes:

1. An admission by the alleged father. A.R.S. § 12-846 (E)(2).[3]

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[2] In _Milam v. Milam_, 101 Ariz. 323, 325, 419 P.2d 502 (1966), the Court held that the divorce court had jurisdiction to order support for children born prior to the marriage where the father admitted paternity. The Arizona Supreme Court held in _Anonymous Wife v. Anonymous Husband_, 153 Ariz. 573, 576, 739 P.2d 794 (1987) that the divorce court could adjudicate the issue of paternity and determine the husband's crossclaim as to his right to obtain reimbursement from the natural father.

[3] The statute reads in relevant part: "[i]f the answer is made admitting the elements of the complaint, a judgment may be entered forthwith or the court may set a subsequent time for hearing and establishment of the terms of the judgment." _Also see_ A.R.S. § 12-852(A)(2). In a dissolution action the court has jurisdiction to award support where paternity is admitted by both parents, the court deeming it unnecessary to bring a paternity action. _Milam v. Milam_, at 101 Ariz. 325. A written acknowledgment of paternity may be sufficient evidence of paternity to warrant criminal prosecution. _Moreno v. Superior Court_, at 3 Ariz. App. 363.

2. A birth certificate with the alleged father's name on it.[4] (Only if the mother was not married to someone else at the time of the child's birth.)

3. Genetic test results in which the alleged father was not excluded.[5]

4. The father's acknowledgment of paternity and provision of financial assistance.[6]

The federal agency (HHS) has left states administering AFDC programs free to determine whether a man is the natural father of a child for purposes of determining the child's eligibility for AFDC benefits, so long as the state's criteria are consistent with State law for establishing paternity. For the reasons that have been discussed, we conclude that DES may consider a man the natural father of a child even in the absence of an adjudication of paternity so long as the Director establishes procedures and criteria for making the

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[4] The clerk of the court may issue an order of paternity if both parents acknowledge paternity. A.R.S. § 12-852 Also, in the absence of contrary evidence, a birth certificate naming the alleged father is sufficient evidence of paternity if the mother was not married to another man at the time the child was conceived or born. A.R.S. § 12-2264. If a child is conceived or born during a marriage, that child is presumed to be the child of the husband. Anonymous v. Anonymous, 10 Ariz. App. 496, 499, 460 P.2d 32 (1970).

[5] Courts rely upon genetic test results as highly probative evidence on the issue of paternity. If there is no evidence to impugn the integrity of the tests the court should enter a judgment of paternity. Anonymous v. Anonymous, 10 Ariz. App. 496, 460 P.2d 32 (1970).

[6] In a probate proceeding, evidence that the alleged father acknowledged paternity and provided financial assistance is sufficient to establish paternity. Estate of Cook, 63 Ariz. 78, 159 P.2d 797 (1945).

paternity determination based on evidence that would be relied upon by Arizona courts in making that determination under state law.

Sincerely,

Grant Woods
Attorney General

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